

REMARKS

The Examiner has rejected the two independent claims, that is, claims 1 and 15, in view of Minor (US 5017042).

Both independent claims define a wall member that has a length extending between end faces that is greater than the transverse width of the wall member. A duct then extends "through" the length of the wall member between the end faces.

The Examiner argues the duct 16 (see Figure 5 of Minor) extends through the wall member between the end faces thereof.

Attention is drawn to column 5, line 9 that describes the item "20" as a wall. Located adjacent the wall 20 is "aggregate filler 18" (column 3, line 22). As best seen in Figure 5, the pipe 16 extends through the aggregate filler 18. It does not extend through the wall 20. Accordingly Minor clearly and unmistakably fails to anticipate the present invention.

The aggregate 18 is used to diffuse gas being generated from decaying vegetation below the structure.

As described in the paragraphs bridging columns 2 and 3 of Minor, the pipe 16 extends through the divided cells 12. If Figures 1 and 2 are inspected the pipe 16 can be seen as passing directly through the cells 12 that contain the aggregate 18.

It is respectfully submitted the reference relied upon by the Examiner clearly fails as an anticipation.

Since the reference relied upon by the Examiner fails to supports his argument in respect of claim 1, it therefore also fails to support the rejection of the appended claim.

The Action also overlooks the Jepson form of the claims previously described. In Jepson or improvement claims:

The terms in both the preamble describing the prior art and those elements constituting the improvement are substantive claim limitations. 37 CFR § 1.75(e). Wells Mfg. Corp. v. Littlefuse, Inc., 192 USPQ 256 (7th Cir. 1976).

Therefore, the claimed invention with the wall portion and duct is "... a wall member portable for resting on a surface" No such wall member has a duct in the patent.

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



William R. Evans
c/o Ladas & Parry LLP
26 West 61st Street
New York, New York 10023
Reg. No. 25858
Tel. No. (212) 708-1930

2 3